Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	

SPRINT CORPORATION'S COMMENTS ON PETITIONS FOR RECONSIDERATION

Respectfully submitted,

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SUMMARY

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies, Sprint Communications Co., L.P., and Sprint Cellular, urges the Commission to reject the American Mobile Telecommunications Association, Inc.'s ("AMTA") request that the Commission reconsider its definition of Commercial Mobile Radio Services ("CMRS"). The Commission's definition is not overly broad and AMTA's request for Private Mobile Radio Services ("PMRS") classification for certain "small" carriers is contrary to the express intent of Congress that similar mobile radio services receive similar regulatory treatment.

Sprint also urges the Commission to reject the request of MCI and other entities, that the Commission reconsider and reverse its decision that CMRS providers need not file tariffs. The Commission's decision was made in accordance with the standards set by Congress for the Commission in making the determination to forbear from certain Title II obligations.

Sprint also opposes the request of NARUC that the Commission reconsider its decision that States petitioning for authority to regulate CMRS rates must submit a copy of their proposed regulations. The Commission must review the proposed regulations in order to satisfy Congressional requirements that the Commission consider the effect state regulation will have on the goal of similar regulatory treatment for similar mobile radio services.

However, Sprint agrees with GTE that, in order to avoid disparate regulation, all CMRS providers, not just PCS providers, should be allowed to designate part of their spectrum for the provision of PMRS.

TABLE OF CONTENTS

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Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies, Sprint Communications Company, L.P., and Sprint Cellular, hereby comments on certain arguments raised in the Petitions for Reconsideration filed on the Second Report and Order.[1]

I. Introduction

In the Second Report and Order the Commission adopted a framework for the future regulation of Commercial Mobile Radio Services ("CMRS") and set forth guidelines to distinguish between CMRS and Private Mobile Radio Services ("PMRS".) Sprint believes that the Commission's efforts in this regard implemented the Congressional intent in adopting Section 6002(b) of the Omnibus Budget Reconciliation Act of

[1] In the Matter of Implementation of Section 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order, FCC 94-31, released March 7, 1994. ("Second Report and Order").

1993,[2] to create regulatory parity among the providers of mobile radio services in order to foster and develop a competitive market.

Several parties seek reconsideration of the Second Report and Order. Many of the issues raised in these reconsideration petitions would be more appropriately addressed during the course of future inquiries and rulemakings, some of which have already been announced.[3] Several of the petitions, however, raise issues of serious concern that Sprint must respond to at this time.

II. The Definition of CMRS Is Neither Too Sweeping Nor Contrary to Congressional Intent.

The American Mobile Telecommunications Association, Inc. ("AMTA") complains that the Commission's definition of CMRS is too sweeping and includes smaller entities such as traditional Specialized Mobile Radio ("SMR") service providers and new 220 MHz Licensees that Congress never intended to include as CMRS providers. Rather, AMTA claims that Congress only intended to include providers of Enhanced Specialized Mobile Radio ("ESMR"), cellular, and Personal Communications Services ("PCS") as CMRS providers while other, smaller mobile radio service providers would be designated as PMRS providers. AMTA suggests the Commission correct this purported problem by excluding those mobile radio service providers that fall within the Small Business Admini-

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[2] Pub. L. No. 103-66, Title VI, Section 6002(b), 107 Stat. 312 (1993). ("Budget Act").

[3] See, e.g., In the Matter of Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Services Providers, GN Docket No. 94-33, Notice of Proposed Rule Making, released May 4, 1994.

stration's net worth test of what constitutes a "small entity" or those that serve less than 50,000 subscribers from the group of entities that provide mobile radio services to a 'substantial portion of the public.' [4]

AMTA's opinion of Congressional intent is mistaken and its suggested modifications are misguided. Had Congress intended to include only ESMR, cellular, and PCS within the CMRS regulatory classification it would have simply enumerated those three services. It did not. Rather, Congress expressed the intent that the Budget Act and the Commission's rules implementing it would establish a regulatory scheme where "similar services are accorded similar regulatory treatment."[5] The focus is not on the size of the provider, but on the nature of the service.

AMTA attempts to introduce the size of the provider as a test to measure whether a service is available to a substantial portion of the public. However, there is no evidence on the record supporting a correlation between the net worth of a provider and the substantial portion of the public to whom the provider's service is available. Additionally, a small (if 50,000 is truly small) number of subscribers does not equate to a service that is NOT available to a substantial portion of the public. Indeed, it is clear that the size of the subscriber base was not a factor in Congress' thinking:

> The Conference Report deletes the word "broad" before "classes of users" in order to ensure that the definition of "commercial mobile

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[4] One of the three prongs of the statutory definition of CMRS. See, Budget Act at Section 6002(d)(1).

[5] H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 1993, 1993 WL 302291 (Leg.Hist.) at p. 1098.

> services" encompasses all providers who offer their services to broad or narrow classes of users so as to be effectively available to a substantial portion of the public.[6]

Congress intended that even though a service was offered to a narrow class of users, it would still be effectively available to a substantial portion of the public. Given this intent, AMTA's suggestion that a provider with less than 50,000 subscribers does not make its service available to a substantial portion of the public is without merit.

The definition of CMRS adopted by the Commission is correct and the modifications suggested by AMTA should be rejected.

III. The Commission Should Not Order CMRS Providers to File Tariffs.

MCI Telecommunications Corporation ("MCI") seeks reconsideration of the Commission's decision to forbear from requiring or permitting CMRS providers to file tariffs for end user services and for access services.[7]

The crux of MCI's argument against forbearance from tariff requirements for providers is that:

> The Commission's conclusion that forbearance is appropriate because all CMRS is offered by "non-dominant carriers" in "competitive markets" is inconsistent with its own findings elsewhere in the R&O that "the record does not support a finding that the cellular marketplace is fully competitive."[8]

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[6] Id, at p. 1104.
[7] See also, Petition for Reconsideration of the National Cellular Resellers Association seeking reconsideration of tariff forbearance for cellular providers.
[8] MCI at p. 4.

MCI's argument is based on contextual contrivance and should, accordingly be rejected. The Commission's forbearance was not premised on the conclusion that all CMRS is offered by "non-dominant carriers" in "competitive markets." On the contrary, in ordering tariff forbearance the Commission stated:

> Despite the fact that the cellular service marketplace has not been found to be fully competitive, there is no record evidence that indicates a need for full-scale regulation of cellular or any other CMRS offerings. . . . most CMRS services are competitive. Competition, along with the impending advent of additional competitors, leads to reasonable rates. Therefore, enforcement of Section 203 is not necessary to ensure that the charges, practices, classifications, or regulations for or in connection with CMRS are just and reasonable and are not unjustly or unreasonably discriminatory.[9] [Emphasis supplied].

Furthermore, MCI's argument leads one to the conclusion that a finding of a fully competitive market is the sine qua non to a decision to forbear. To the contrary, the Budget Act specifies that the Commission may forbear enforcement of a particular common carrier obligation only if it finds that enforcement is not necessary to ensure reasonable and nondiscriminatory rates, enforcement is not necessary to protect consumers, and forbearing enforcement is consistent with the public interest.[10]

The Budget Act specifies that:

> if the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.[11] [Emphasis supplied.]

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[9] Second Report and Order at par. 174.
[10] Budget Act at Section 6002(b)(2)(A) codified at 47 U.S.C.. Section 332(c)(1)(a)(i)-(iii).
[11] Id., at Sec. 6002(b)(2)(a) codified at 47 U.S.C. Section 332(c)(1)(C).

Thus, while the question of whether competition will be enhanced is certainly relative to a forbearance decision, a finding of an existing fully competitive market is not necessary and the Commission's decision to forbear from requiring CMRS providers to file tariffs for end user services was made in accordance with the statutory mandates.

MCI also objected to forbearance from requiring the filing of access tariffs and intercarrier contracts by CMRS providers. Apparently, MCI is concerned that LECs that are also CMRS providers will use this decision to detariff LEC provided, non-mobile service access. MCI also expressed concern that without tariffs or the required filing of intercarrier contracts, the complaint process will be the only means to prevent misallocation between monopoly and competitive services. MCI's concerns are overstated. The Commission's forbearance decision merely continues historical practices.

Furthermore, in announcing its decision on access tariff forbearance, the Commission stated that it would look at its decision "in more detail in proceedings addressing interconnection issues . . .."[12] On June 9, 1994 the Commission initiated just such a proceeding.[13] To the extent MCI's concerns require additional consideration, it should be as part of that proceeding.

IV. The Commission's Determination to Delay Promulgation of Rules Requiring CMRS Providers to Interconnect Does Not Violate the Budget Act

[12] Second Report and Order at par. 179.
[13] Action in Docket Case, released June 2, 1994 announcing a NPRM and NOI.

The National Cellular Resellers Association argues that the Budget Act required the Commission to order CMRS providers to interconnect with all other carriers and that such order must be effective by August 10, 1994.[14] Had Congress intended for the Commission to enter such an order it could have simply so stated in the Budget Act. It did not. Indeed, had Congress intended that CMRS providers be subject to such an obligation by a date certain, it seems unlikely Congress would have left it to the Commission. Congress could simply have included such a requirement in the Budget Act. It did not. Rather, the correct interpretation is that set forth in Sprint's Reply Comments:

> The [Budget] Act provides that all CMS providers are common carriers. Section 201 of the Communications Act, from which the [Budget] Act does not permit the Commission to forbear, empowers the Commission to order common carriers to provide interconnection. Thus, should the Commission determine that interconnection among CMS providers is warranted, it can order interconnection. At present, the Commission has no record upon which to make such a determination.[15]

This interpretation is consistent with the express language of the Budget Act that provides, with reference to the ordering of interconnection by the Commission, that "this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act [Communications Act]."[16] Accordingly, no reconsideration of the Commission's interconnection decision is warranted.

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[14] See also Petition for Reconsideration of Cellular Service, Inc. and ConTech, Inc.
[15] Id. at pp. 7-8.
[16] Budget Act at Section 6002(b)(A), now codified at 47 U.S.C. Section 332(c)(1)(B).

Several other parties seek reconsideration of various "interconnection" related issues. For example MCI asks the FCC to clarify that the states cannot exercise their jurisdiction over interconnection rates charged by landline carriers to create barriers to CMRS entry. On the other hand, the National Association of Regulatory Utility Commissioners ("NARUC") states that Congressional intent was for preemption of state regulation of CMRS end user rates, not CMRS interconnection rates. Accordingly, NARUC asks the Commission to clarify that it did not preempt state regulation of CMRS interconnection rates.

Sprint believes that these and other interconnection issues should be addressed in the Commission's recently announced NPRM and NOI on equal access and interconnection.[17] However, Sprint points out that the Budget Act preempts state regulation, not just of rates charged (regardless of whether they are end user or interconnection rates) by CMRS providers, but also preempts state regulation of the "entry of" any "commercial mobile service" provider.[18] Accordingly, Sprint agrees with MCI that if the Commission does not preempt state regulation of interconnection rates, it must, at a minimum, ensure that such state interconnection rate regulation does not act as a barrier to entry.

V. The Commission Should Not Eliminate the Requirement That A State File Detailed Proposed Rules as Part of a Petition for Authority to Regulate CMRS Rates and Entry

[17] See, note 13 herein.
[18] Budget Act at Sec. 6002(b)(A), now codified at 47 U.S.C. Section 332 (c)(3).

NARUC objects to the requirement in new rule 20.13(a)(4), 47 C.F.R. Section 20.13(a)(4) that "Petitions [state petitions to regulate rates] must identify and describe in detail the rules the state proposes to establish if the petition is granted." NARUC complains that such requirement goes beyond the statutory requirements and may unnecessarily delay a state's rulemaking process.

Sprint disagrees with NARUC's conclusion. The Commission's rules are consistent with Congressional intent, as stated in the Conference Report, that:

> It is the intent of the Conferees that the Commission, in considering the scope, duration or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection as implemented by the Commission, so that, consistent with the public interest, similar services are accorded similar regulatory treatment.[19]

Obviously, if the Commission is to ensure that proposed state regulations are consistent with the public interest, the Commission must know what is in the proposed state regulations. To do otherwise would amount to regulation in a vacuum that would clearly violate Congressional intent.

Furthermore, Sprint believes NARUC's concerns with timing problems in the rulemaking process are, at best, overstated. The Commission's rule does not require a State to submit final rules with a petition to regulate rates. Rather a State is only required to submit proposed rules. There are no facts on the record that there will be a problem with final state rules being so inconsistent with the proposed rules that the Commission will need to reconsider a grant of

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[19] H.R. Conf. REP. No. 213, 103rd Cong., 1st Sess. 1983, 1993 W.L. 302291 (Leg. Hist.) at p. 1097-1098.

authority based on the proposed rules. If indeed such a problem arises, there are procedures available, such as Petitions for Declaratory Rulings, that interested parties can use to bring the matter to the Commission's attention.

VI. All CMRS Providers, Not Just PCS Providers, Should Be Allowed to Use Their Spectrum for Private Services

GTE Service Corporation ("GTE") points out that the Commission's rules permit PCS licensees to provide PMRS on part of their spectrum, but does not extend the same flexibility to other CMRS licenses.[20] Indeed, as GTE notes, the existing Part 22 rules specifically prohibit cellular carriers from using their licensed transmitters for non-common carrier purposes.[21]

Sprint agrees with GTE that such disparity between PCS providers and other CMRS providers is not warranted and fails to achieve the goal of similar regulatory treatment for similar mobile radio services. Sprint agrees that the Commission should eliminate this disparity by permitting all CMRS providers to designate spectrum for PMRS.

VII. Conclusion

Sprint respectfully requests that the Commission reconsider and permit all CMRS providers to provide PMRS as requested by GTE. In all respects, Sprint

[20] GTE Petition for Reconsideration or Clarification at pp. 7-8.
[21] 47 C.F.R. Section 22.119.

urges the Commission to reject the Petitions for Reconsideration as hereinabove specified.

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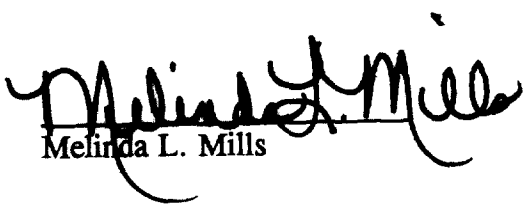
CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 17th day of June, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Sprint Corporation's Comments on Petitions for Reconsideration" in the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252 filed this date with the Acting Secretary, Federal Communications Commission, to the persons listed on the attached service list.



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